

Provisions in the Farm Bill **Pertaining to Pigford Claims (2008)**

(17) Foreclosure

The Senate amendment states that currently there is a USDA guidance that prohibits loan foreclosures when there is a pending claim of racial discrimination against the Department. This provision amends section 307 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1927) to put into law what is already in place in a guidance at USDA.

Subsection (a) Moratorium. This section mandates a moratorium on all loan acceleration and foreclosure proceedings where there is a pending claim of discrimination against the Department related to a loan acceleration or foreclosure. This section also waives any interest and offsets that might accrue on all loans under this title for which loan and foreclosure proceedings have been instituted for the period of the moratorium.

If a farmer or rancher does not prevail on his claim of discrimination, then the farmer or rancher will be liable for any interest and offsets that accrued during the period that the loan was in abeyance. The moratorium will terminate on either the date the Secretary resolves the discrimination claim or the court renders a final decision on the claim, whichever is earlier.

Subsection (b) Report. This section requires the Inspector General of USDA to determine whether loan foreclosure proceedings of socially disadvantaged farmers have been implemented according to applicable laws and regulations. The Inspector General shall submit a report of its determination to the Senate and House Committees on Agriculture not later than a year after this legislation's enactment. (Section 11051)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment with an amendment that the farmer or rancher is required to have a program discrimination claim and that the Department makes a procedural determination to accept the claim as a valid one. The determination to accept the claim by the Department is intended to be procedural and not a statement as to the merits of the claim. The Conference substitute amends Section 331A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981a) and specifies that the provision applies to farmer program loans made under subtitle A, B, or C. (Section 14002)

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(36) Pigford claims

The House bill provides that Pigford claimants who have not had their cases determined on the merits may, in a civil action, obtain such a determination. Payments or debt relief are to be exclusively made from mandatory funds provided to carry out this section. The total amount of payments and debt relief are prohibited from exceeding \$100

million; additionally, payments and debt relief provided under this section are not to be made from Judgment Fund established by 31 U.S.C. 1304. The intent of Congress is to have this section liberally construed. Not later than 60 days after the Secretary receives notice that a Pigford claimant desires to have a determination made on the merits of a claim, the Secretary is to provide the claimant with a report on farm credit loans made within the claimant's county, or adjacent county, by USDA for a period beginning on - 319 -

Jan. 1 of the year or years covered by the complaint and ending on Dec. 31 of the following year or years.

The report is to contain information on all person whose loans were accepted, including:

- (a) the race of the applicant;
- (b) the date of the application;
- (c) the date of the loan decision;
- (d) the location of the office making the loan decision; and
- (e) all data relevant to the process of deciding the loan.

The reports provided by USDA are not to contain identifying information regarding the person that applied for a USDA loan. Claimants who allege discrimination in the application for, or making or servicing of, a farm loan are permitted to seek liquidated damages of \$50,000, or a discharge of the debt that was incurred under, or affected by, the alleged discrimination that is the subject of the complaint, and a tax payment in an amount of the liquidated damages and loan principal discharged only if:

- (1) the claimant is able to prove his or her case by substantial evidence; and
- (2) the court decides the case based on documents, submitted by the claimant, that are relevant to the issue of liability and damages.

The Secretary is prohibited from beginning acceleration on or foreclosure of a loan if the borrower is a Pigford claimant and, during an administrative proceeding, the claimant makes a prima facie case that the foreclosure is related to a Pigford claim. A "Pigford claimant" is defined as an individual who previously submitted a late-filing request under section 5(f) of the Pigford consent decree, in the case of Pigford v. Glickman, approved by the U.S. District Court for DC on April 14, 1999. A "Pigford claim" is defined as a discrimination complaint, as defined by section 1(h) of the Pigford consent decree and documented under section 5(b) of the decree.

Mandatory funding of \$100 million is to be made for fiscal year 2008. The funding is to remain available until it has been expended for payments and debt relief in satisfaction of claims against the U.S, with respect to a Pigford claimants who have their claims determined on the merits, and for any actions made related to the prohibition regarding foreclosures related to Pigford claims. (Section 11312)

The Senate amendment is the same as the House bill except:

- (1) Subsection (a)(1) requires all claimants to file in United States District Court for the District of Columbia.
- (2) Subsection (a)(2) connects the definition of "substantial evidence to the one used in the original consent decree.

(3) Authorizes appropriate funds as necessary beyond the \$100 million in mandatory funding. (Section 5402)

The Conference substitute adopts the Senate amendment with modifications. The Secretary will have 120 days to provide the claimant a report, or may petition the court for an extension. The modification requires the Secretary to retrieve data from within the claimant's county, or, if no documents are found then within an adjacent county as determined by the claimant.

The modification provides for those who are filing a claim for discrimination involving a noncredit benefit to be able to obtain a report from the Secretary. It also provides for those claimants to receive a maximum of \$3,000 irrespective of the number of noncredit claims on which the claimant prevails.

The modification provides for those filers who chose not to go through the expedited resolutions process, to be entitled to actual damages if the claimant prevails.

The modification also provides a requirement for the Secretary to report once every six months to both the House and Senate Committees on the Judiciary the status of available funds and the number of pending claims under the expedited resolutions process. It further requires the Secretary to notify those Committees once 75% of the funds have been depleted. It further provides for a 2-year statute of limitations to file a claim under this section.

(Section 14012)

SEC. 14012. DETERMINATION ON MERITS OF PIGFORD CLAIMS.- pg 568

(a) DEFINITIONS.—In this section:

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(1) CONSENT DECREE.—The term “consent decree” means the consent decree in the case of Pigford v. Glickman, approved by the United States District Court for the District of Columbia on April 14, 1999.

(2) DEPARTMENT.—The term “Department” means the Department of Agriculture.

(3) PIGFORD CLAIM.—The term “Pigford claim” means a discrimination complaint, as defined by section 1(h) of the consent decree and documented under section 5(b) of the consent decree.

(4) PIGFORD CLAIMANT.—The term “Pigford claimant” means an individual who previously submitted a late-filing request under section 5(g) of the consent decree.

(b) DETERMINATION ON MERITS.—Any Pigford claimant who has not previously obtained a determination on the merits of a Pigford claim may, in a civil action brought in the United States District Court for the District of Columbia, obtain that determination.

(c) LIMITATION.—

(1) IN GENERAL.—Subject to paragraph (2), all payments or debt relief (including any limitation on foreclosure under subsection (h)) shall be made exclusively from funds made available under subsection (i).

(2) MAXIMUM AMOUNT.—The total amount of payments and debt relief pursuant to actions commenced under subsection (b) shall not exceed \$100,000,000.

(d) INTENT OF CONGRESS AS TO REMEDIAL NATURE OF SECTION.—It is the intent of Congress that this section be liberally construed so as to effectuate its remedial purpose of giving a full determination on the merits for each Pigford claim previously denied that determination.

(e) LOAN DATA.—

(1) REPORT TO PERSON SUBMITTING PETITION.—

(A) IN GENERAL.—Not later than 120 days after the Secretary receives notice of a complaint filed by a claimant under subsection (b), the Secretary shall provide to the claimant a report on farm credit loans and noncredit benefits, as appropriate, made within the claimant's county (or if no documents are found, within an adjacent county as determined by the claimant), by the Department during the period beginning on January 1 of the year preceding the period covered by the complaint and ending on December 31 of the year following the period.

(B) REQUIREMENTS.—A report under subparagraph (A) shall contain information on all persons whose application for a loan or benefit was accepted, including—

- (i) the race of the applicant;*
- (ii) the date of application;*
- (iii) the date of the loan or benefit decision, as appropriate;*
- (iv) the location of the office making the loan or benefit decision, as appropriate;*
- (v) all data relevant to the decisionmaking process for the loan or benefit, as appropriate; and*

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(vi) all data relevant to the servicing of the loan or benefit, as appropriate.

(2) NO PERSONALLY IDENTIFIABLE INFORMATION.—The reports provided pursuant to paragraph (1) shall not contain any information that would identify any person who applied for a loan from the Department.

(3) REPORTING DEADLINE.—

(A) IN GENERAL.—The Secretary shall—

(i) provide to claimants the reports required under paragraph (1) as quickly as practicable after the Secretary receives notice of a complaint filed by a claimant under subsection (b); and

(ii) devote such resources of the Department as are necessary to make providing the reports expeditiously a high priority of the Department.

(B) EXTENSION.—A court may extend the deadline for providing the report required in a particular case under paragraph (1) if the Secretary establishes that meeting the deadline is not feasible and demonstrates a continuing effort and commitment to provide the required report expeditiously.

(f) EXPEDITED RESOLUTIONS AUTHORIZED.—

(1) IN GENERAL.—Any person filing a complaint under this section for discrimination in the application for, or making or servicing of, a farm loan, at the discretion of the person, may seek liquidated damages of \$50,000, discharge of the debt that was incurred under, or affected by, the 1 or more programs that were the subject of the 1 or more discrimination claims that are the subject of the person's complaint, and a tax payment in the amount equal to 25 percent of the liquidated damages and loan principal discharged, in which case—

(A) if only such damages, debt discharge, and tax payment are sought, the complainant shall be able to prove the case of the complainant by substantial evidence (as defined in section 1(l) of the consent decree); and

(B) the court shall decide the case based on a review of documents submitted by the complainant and defendant relevant to the issues of liability and damages.

(2) NONCREDIT CLAIMS.—

(A) STANDARD.—In any case in which a claimant asserts a noncredit claim under a benefit program of the Department, the court shall determine the merits of the claim in accordance with section 9(b)(i) of the consent decree.

(B) RELIEF.—A claimant who prevails on a claim of discrimination involving a noncredit benefit program of the Department shall be entitled to a payment by the Department

in a total amount of \$3,000, without regard to the number of such claims on which the claimant prevails.

(g) ACTUAL DAMAGES.—A claimant who files a claim under this section for discrimination under subsection (b) but not under subsection (f) and who prevails on the claim shall be entitled to actual damages sustained by the claimant.

(h) LIMITATION ON FORECLOSURES.—Notwithstanding any other provision of law, during the pendency of a Pigford claim, the Secretary may not begin acceleration on or foreclosure of a loan if—

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(1) the borrower is a Pigford claimant; and

(2) makes a prima facie case in an appropriate administrative proceeding that the acceleration or foreclosure is related to a Pigford claim.

(i) FUNDING.—

(1) IN GENERAL.—Of the funds of the Commodity Credit Corporation, the Secretary shall make available for payments and debt relief in satisfaction of claims against the United States under subsection (b) and for any actions under subsection (g) \$100,000,000 for fiscal year 2008, to remain available until expended.

(2) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds made available under paragraph (1), there are authorized to be appropriated such sums as are necessary to carry out this section.

(j) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act and every 180 days thereafter until the funds made available under subsection (i) are depleted, the Secretary shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that describes the status of available funds under subsection (i) and the number of pending claims under subsection (f).

(2) DEPLETION OF FUNDS REPORT.—In addition to the reports required under paragraph (1), the Secretary shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that notifies the Committees when 75 percent of the funds made available under subsection (i)(1) have been depleted.

(k) TERMINATION OF AUTHORITY.—The authority to file a claim under this section terminates 2 years after the date of the enactment

of this Act.

(37) Sense of Congress relating to claims brought by socially disadvantaged farmers or ranchers

The Senate amendment contains a sense of Congress that the Secretary should resolve all claims and class actions brought against the United States Department of Agriculture by socially disadvantaged farmers or ranchers including Native Americans, Hispanics, and female farmers regarding discrimination in farm loan program participation. (Section 5403)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment with a modification that all pending claims should be resolved expeditiously. (Section 14011)